

CLAUSE I-126 – SUBCONTRACTS (FIXED-PRICE CONTRACTS) (August 2002)

NOTE: This clause applies if this subcontract exceeds \$100,000.

- (a) This clause does not apply to firm-fixed-price subcontracts and fixed-price subcontracts with economic price adjustment. However, it does apply to lower-tier subcontracts resulting from unpriced modifications to such subcontracts.
- (b) "Lower-Tier Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Subcontractor shall notify SURA reasonably in advance of entering into any lower-tier subcontract if the Subcontractor does not have an approved purchasing system and if the lower-tier subcontract –
  - (1) Is proposed to exceed \$100,000; or
  - (2) Is one of a number of lower-tier subcontracts with a single lower-tier subcontractor, under this subcontract, for the same or related supplies or services, which in the aggregate are expected to exceed \$100,000.
- (c) The advance notification required by paragraph (b) above shall include –
  - (1) A description of the supplies or services to be subcontracted;
  - (2) Identification of the type of subcontract to be used;
  - (3) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained;
  - (4) The proposed lower-tier subcontract price and the Subcontractor's cost or price analysis;
  - (5) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions;
  - (6) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract; and
  - (7) A negotiation memorandum reflecting –
    - (i) The principal elements of the lower-tier subcontract price negotiations;
    - (ii) The most significant considerations controlling establishment of initial or revised prices;
    - (iii) The reason cost or pricing data were or were not required;
    - (iv) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - (v) The extent, if any, to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
    - (vi) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
    - (vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (d) The Subcontractor shall obtain SURA's written consent before placing any lower-tier subcontract for which advance notification is required under paragraph (b) above. However, SURA may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of SURA.
- (e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain SURA's written consent before placing lower-tier subcontracts that have been selected for special surveillance and so identified in the Schedule of this subcontract.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by SURA to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any lower-tier subcontract price or of any amount paid under any lower-tier subcontract, or (3) to relieve the Subcontractor of any responsibility for performing this subcontract.

- (g) No lower-tier subcontract placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.903(d) of the Federal Acquisition Regulation (FAR).
- (h) SURA reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.